

CHAPTER 75-04-07
INDIVIDUALIZED SUPPORTED LIVING ARRANGEMENTS FOR PERSONS
WITH MENTAL RETARDATION - DEVELOPMENTAL DISABILITIES

Section

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75-04-07-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Administrative reimbursement" means a flat fee intended for reimbursement toward administrative costs and management incentive.
2. "Ancillary services" means consultative services from a psychologist, physical therapist, nurse, audiologist, dietician, speech pathologist, or orthotic and prosthetic specialist. Consultative services must be necessary to provide training to staff for completion of behavioral or service objectives for a particular client, or necessary to maintain or restore functioning level for a client. This subsection may not be construed to allow the purchase of durable medical equipment. This definition of "ancillary services" applies only to the individualized supported living arrangements program.
3. "Clients" means eligible persons with developmental disabilities on whose behalf services are provided or purchased.
4. "Cost-effective" means a daily rate for residential support which is equal to or less than that of a residential program the client was in prior to being referred to an individualized supported living arrangements program. An assessment of cost effectiveness of a prospective contract may include environmental considerations for others that are affected by the client's current or proposed placement in the individualized supported living arrangements program.
5. "Department" means the department of human services.
6. "Division" means the developmental disabilities division of the department.

7. "Failure to cooperate" means refusal of a client in individualized supported living arrangements to participate in support, training, or therapeutic services designed to increase the client's capacity for independent functioning or perform self-care or activities of daily living which the client has been found to have the skills or adaptive methods to competently perform. A determination of the skills or adaptive methods to competently perform may be made based on assessments made by the individual plan program team.
8. "Family member" means relatives or a client to the second degree of kinship.
9. "Generic service" means services that are available to any member of the population and are not specific to meeting specialized needs of individuals with mental retardation-developmental disabilities.
10. "Individual program plan team" means a multiagency, interdisciplinary team consisting of the client, significant others, advocates, direct contact workers, and others necessary to design a written plan of specific program intervention and action to meet the client's needs as identified in the client's individual service plan. The individual program plan team must be developed in accord with the accreditation council standards pursuant to chapter 75-04-01.
11. "Individual service plan" means an individual plan which identifies services required by the eligible client and the services to be provided. The individual service plan is developed by the mental retardation-developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
12. "Individualized supported living arrangements" means residential support services options in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
13. "Less intrusive" means a residential situation for a client allowing levels of direct supervision or intervention lower than other residential service program arrangements, yet meets the client's basic needs.
14. "Less restrictive" means a residential situation allowing less control over a client's personal choices, movement, and activities, yet meets the person's basic needs.
15. "Mental retardation-developmental disability related condition" means a condition that results in the person being eligible pursuant to chapter 75-04-06.

16. "Personal independence development" means intervention strategies, supports, and adaptations which have the effect of reducing a client's dependence on external support and assistance to meet basic needs.
17. "Primary caregiver" means a person who has assumed responsibility for supervision and assistance in meeting the needs of the client and who is not employed by or working under contract of a provider licensed pursuant to chapter 75-04-01.
18. "Related organization" means an organization that a provider is, to a significant extent, controlled by, associated with, affiliated with, or able to control, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, to significantly influence or direct the action or policies of an organization or institution.
19. "Similar benefits" means services, supports, or benefits a client may be eligible for through services other than a developmental disabilities division purchased service.
20. "Twenty-four-hour staffing" means continuous and ongoing direct staff supervision by paid staff for all hours of a day which may be inclusive of a day service or employment program.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-02. Conditions of client participation. A client may be eligible to receive services in an individualized supported living arrangements setting if:

1. The client has been determined eligible for mental retardation-developmental disabilities case management pursuant to chapter 75-04-06;
2. The client has been recommended for individualized supported living arrangements by an individual service plan;
3. The client's need for residential support is primarily the result of mental retardation or a closely related condition;
4. The client's needs cannot be more appropriately met by a generic service or service including hospitals, clinics, human service centers, nursing facilities, or correctional facilities;
5. The client's needs can be expected to be met by the supports and services provided for in this chapter;

6. Service through the individualized supported living arrangements program is cost effective in meeting the client's needs;
7. An individualized supported living arrangements program is expected to be a less intrusive and less restrictive residential living alternative;
8. The client is at least twenty-one years of age or the client has completed all educational programming to which the client is entitled under state and federal laws and will reach the age of twenty-one years by the next September first, unless the client is participating during the last semester of education and the participation is part of a formal transition plan;
9. The client is living in the client's own residence, independent of a primary caregiver, or lives in a residence meeting the licensing requirements pursuant to chapter 75-03-21;
10. A licensed qualified provider is willing to provide necessary services;
11. The client has an individualized supported living arrangements contract with terms approved by the provider, the regional developmental disabilities program administrator, and the division, and which terms may:
 - a. Reflect individual service plans and individual program plan assessments of need and their respective recommendations;
 - b. Reflect the considerations of the client's legal rights and responsibilities; and
 - c. Reflect the efficient use of public resources.
12. The client's service needs remain compatible with the available services listed in section 75-04-07-05; and
13. When the client receives services in the home of a family, the home is licensed pursuant to chapter 75-03-21.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-03. Conditions of provider participation.

1. Individualized supported living arrangement services shall be purchased by the department through the developmental disabilities division by individual contract from providers licensed pursuant to chapter 75-04-01.

2. As a condition of participation in the program, a licensed service provider shall include its individualized supported living arrangements program in the accreditation council on services for people with disabilities survey process.
3. In the event of discontinuation, termination, or nonrenewal of a contract or service, the provider shall cooperate in the referral and transition of the client to alternative services.
4. The provider shall make copies of all client records available to the department upon request.
5. For audit purposes, providers participating in the program shall maintain records of revenue and cost pursuant to chapter 75-04-05.
6. At the client's request, the department may negotiate contracts between providers of services and clients who pay the entire cost of the contract from their own financial resources. After negotiations are completed, the department shall have no further participation in the costs or payment of the contract provisions.
7. Each provider shall compile written job descriptions for their employees that include provisions for participation in ongoing training and requirements for education, experience, and skills. Provision must also be made for at least one performance evaluation per year.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-04. Discontinuation, termination, and nonrenewal of individualized supported living arrangements contracts or services.

1. Individualized supported living arrangement services to a client must be discontinued at the expiration of an executed contract when:
 - a. A client with legal capacity fails to cooperate with the delivery of services;
 - b. Based on the assessment of available material, the continued provision of services to the client presents a threat to the health and safety of the client or others; or
 - c. Based on the assessment of available material, it is determined that the needs of the client are no longer being met by the individualized supported living arrangements program or that continued services will not bring satisfactory results.

2. Nonrenewal of a service contract with a provider for a client must be considered by the department for reasons that include:
 - a. The client exhibits a lack of progress, assessed by the developmental disabilities case management utilization review process, in development of independent functioning consistent with the client's potential, unless barriers to development of independent functioning exist that cannot reasonably be expected to be controlled or ameliorated through available services;
 - b. The provider fails to deliver the levels and types of services specified in the contract, to provide qualified staff, or to provide resources necessary to meet the individual's needs which have not decreased during the term of the contract;
 - c. The provider, regional developmental disabilities office, and the division fail to agree on contract renewal terms;
 - d. The provider fails to develop and activate an individual program plan within thirty days of admission or annual program plan development;
 - e. Misrepresentation of the client's needs;
 - f. The provider fails to give the client a reasonable opportunity to participate in selection of ancillary service providers and direct service staff; or
 - g. The housing occupied by the client is owned or controlled by the provider of service and service to the client is contingent upon the client remaining in that housing or lease or rental agreement, which is less favorable to the renter than that normally used in the local real estate market.
3. Immediate termination of a current contract for a client with a specific provider, or termination of services through the individualized supported living arrangements program, must be considered by the department based on available information and assessments through its developmental disabilities division for reasons that include:
 - a. An individual service plan has been completed, which would terminate individualized supported living arrangements services or authorize an alternative residential service;
 - b. Substantiated abuse, neglect, or exploitation of the client by an employee or agent of the provider;

- c. Institutionalization, incarceration, or alternative placement of the client, except as provided in subdivision g of subsection 1 of section 75-04-07-05;
- d. Death of the client with the contract terminating on the date of death;
- e. The client establishes a residence out of state;
- f. The client refuses to cooperate in the provision of services; or
- g. Continued service to the client presents an immediate threat to the health or safety of the client or others.

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-05. Services available in the individualized supported living arrangements program.

- 1. Services and supports available for reimbursement in individualized supported living arrangements contracts:
 - a. Temporary room and board subsidies;
 - b. Ancillary services as defined in subsection 2 of section 75-04-07-01;
 - c. Service coordination and individual program plan development and monitoring, including:
 - (1) Qualified mental retardation or mental health professional allowance; and
 - (2) Internal case management allowance;
 - d. Direct contact staff time for personal supports, including:
 - (1) Safety and health monitoring and maintenance;
 - (2) Personal hygiene and grooming;
 - (3) Management of personal affairs related to daily living needs;
 - (4) Food preparation and storage;
 - (5) Housekeeping and home maintenance;

- (6) Clothing care and maintenance; and
 - (7) General supervision for health and safety;
 - e. Direct contact staff time for personal independence development strategies, including:
 - (1) Development of natural supports;
 - (2) Activities and strategies to promote community inclusion;
 - (3) Support and adaptive strategies to enhance client control and independence over the individual's environment, resources, activities, self-care, and self-control; and
 - (4) Training:
 - (a) Modeling;
 - (b) Demonstration;
 - (c) Experiential activities;
 - (d) Reinforcement; and
 - (e) Structured learning;
 - f. Administrative reimbursement;
 - g. Only an administrative reimbursement and service coordination allowance are available for the time a client is absent from the service setting and out of the provider's sphere of direct service responsibility for a time period that exceeds thirty consecutive days;
 - h. Relief staff time;
 - i. Direct contact staff training time; and
 - j. Fringe benefits for subdivisions c, d, e, and h of subsection 1 of section 75-04-07-05.
2. Services not available for reimbursement in individualized supported living arrangements contracts include:
- a. Room and board subsidies when:
 - (1) The housing occupied by the client does not meet local codes for occupancy;

- (2) The housing occupied by the client is owned or controlled by the provider or a related organization, except when no other lessor is willing to rent to the client at a comparable rate due to credit, behavioral, or other factors attributable to the client;
 - (3) The client resides in a residential unit that has more than one bedroom per resident, except where the department determines standby, overnight staffing is a necessity for the protection of others;
 - (4) The client fails to apply for or accept maintenance benefits when eligible;
 - (5) The client resides in a building where more than twenty-five percent of the total bedrooms are occupied by individuals currently eligible for developmental disabilities-mental retardation case management services; or
 - (6) The client's income exceeds basic need expenses by more than the personal spending allowance level for a resident of an intermediate care facility for the mentally retarded;
- b. Financial assistance to purchase real property or motor vehicles;
 - c. Direct supervision in excess of what is necessary for health and safety with determination based on available assessments;
 - d. Personal support and assistance to complete daily living tasks a client is unwilling to perform, but capable of performing, unless assistance is necessary to avert threats to the client's safety with determination based on available assessments;
 - e. Personal support for maintenance of housing that does not meet local dwelling codes;
 - f. Support staffing for the care of pets or livestock;
 - g. Assistance for maintenance of property other than the client's immediate residence and personal property;
 - h. Services available to the client under entitlement programs or generic services;
 - i. Supports or services to address personal preferences unless accommodation is cost neutral or is instrumental in developing the client's personal independence and will result in decreased need for paid support;

- j. Services provided to a client by a family member or in the home of a family member;
 - k. Services provided to a client prior to execution of a contract;
 - l. Direct support for travel for a client outside the client's community of residence unless support needs would be the same during the time of travel as at home or the travel is necessary for medical needs, emergency, or obtaining basic necessities not available in the client's home community;
 - m. Purchase of real property or maintenance of income-producing property;
 - n. Fees for guardianship, conservatorship, legal services, or financial management of investments, trusts, or estates;
 - o. Replacement of institutional-based services when the client's needs are predominantly due to a condition not related to mental retardation or a developmental disabilities case management eligible condition;
 - p. Material or financial reinforcers for behavior management plans; and
 - q. Continuous or twenty-four-hour supervision by paid staff on a one-to-one basis within the individualized supported living arrangements program for a client unless a shared staffing arrangement would create a safety threat to the client or others.
3. Excluding the qualifying mental retardation-developmental disability, individualized supported living arrangements support or treatment is not available for any condition whose general medical protocol or generally accepted medical practices for treatment for the general population requires institutional care. Individualized supported living arrangements allow support services for management of medical conditions that are not attributable to the qualifying mental retardation-developmental disability, if the qualifying mental retardation-developmental disability causes the client to be unable to perform self-care that is normally expected by the general population medical protocol and generally accepted medical practices.

4. Services authorized by contract may include those in this section, but cost ceilings may be established by the department for rates of reimbursement for those services.

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75-04-07-06. Appeals. A client may perfect an appeal if the client has been denied services or has had services discontinued based on subsections 3, 4, 5, 6, 7, 9, and 12 of section 75-04-07-03, subdivisions a, b, and c of subsection 1, and subdivisions f and g of subsection 3 of section 75-04-07-04. An appeal under this section is timely perfected only if made in writing on forms developed and provided by the department. The complaining subject must submit the written request for an appeal and formal hearing to:

Appeals Supervisor
North Dakota Department of Human Services
State Capitol - Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

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